

## **ORDINANCE O2016-010**

**AN ORDINANCE** of the City Council of the City of Tumwater, Washington, amending TMC 17.14.080 Duration of Approval and TMC 17.14.090, Phased Development, authorizing City officials to grant extensions for preliminary land divisions in response to delays occasioned by United States Fish and Wildlife Service's requirement for Habitat Conservation Plan for federally listed species and their habitats within the City (amending Ordinance Nos. O2011-002 and O2011-015).

**WHEREAS**, Tumwater Municipal Code, Section 17.14.080, provides that preliminary land division approvals shall be effective for seven years from the date of approval, subject to up to three administratively granted one-year extensions; and

**WHEREAS**, Tumwater Municipal Code, Section 17.14.090, provides that residential developments with more than 100 dwelling units, and commercial or industrial developments covering more than 20 acres, may attain final plat approval in phases consisting of at least two but not more than four phases; and

**WHEREAS**, Tumwater Municipal Code, Section 17.14.090, mandates that in the case of preliminary land division phased developments, applications for final plat approval for each successive phase must be submitted within three years of the submittal for final plat approval on the previous phase; and

**WHEREAS**, on April 9, 2014 the United States Fish and Wildlife Service listed for Endangered Species Act protection various species and prairie habitat in the Federal Register Volume 79, Issue 68. The listings include a significant portion of the City of Tumwater; and

**WHEREAS**, projects affected by the listing may need to obtain an incidental take permit requiring development of a Habitat Conservation Plan; and

**WHEREAS**, the City and the United States Fish and Wildlife Service are in the process of developing a Citywide Habitat Conservation Plan, which developers may choose to take advantage of for purposes of ease and predictability; and

**WHEREAS**, the expiration of development approvals can have significant financial impacts to a developer, and also adversely affect financial institutions and investors that have provided financing for a development project; and

**WHEREAS**, development related activity is a significant tax revenue generator and provides a much needed source of revenue to local governments to finance public safety and other necessary public services; and

**WHEREAS**, in order to prevent expiration of development approvals pending completion of Habitat Conservation Plans, extensions of expiration dates of certain development related approvals are needed; and

**WHEREAS**, the amendment was reviewed in conformance with the City of Tumwater's Public Participation and Intergovernmental Coordination Procedures contained in its Comprehensive Plan, which meet the Growth Management Act requirements for the same; and

**WHEREAS**, the Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property (Dec. 2015) was reviewed and utilized by the City in objectively evaluating the amendments proposed by this ordinance; and

**WHEREAS**, the City of Tumwater forwarded the amendment to the Washington State Department of Commerce for review on May 16, 2016, as required by RCW 36.70A.106; and

**WHEREAS**, the Washington State Department of Commerce acknowledged receiving the amendment on May 18, 2016; and

**WHEREAS**, the City issued a Determination of Non-significance for the amendment on May 19, 2016, in accordance with the State Environmental Policy Act (SEPA), WAC 197-11, and Chapter 16.04 of the Tumwater Municipal Code; and

**WHEREAS**, staff briefed the Tumwater Planning Commission on the amendments at their June 28, 2016 meeting; and

**WHEREAS**, the Tumwater Planning Commission held a public hearing on the amendments on July 12, 2016, and considered all testimony and evidence before making a recommendation to City Council; and

**WHEREAS**, City Council, after considering all of the testimony and evidence, finds that the amendments support the health, safety and welfare, and are in the best interests of the residents of the City of Tumwater.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF  
TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1.** Section 17.14.080 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.14.080 Duration of approval.**

Approval of the preliminary land division shall be effective for seven years from the date of approval by the staff or hearing examiner as required, during which time a final land division(s) may be submitted. During this time the terms and conditions upon which the preliminary approval was given will not be changed, except as provided for in TMC 17.14.110. Land divisions that are not submitted as phased development under TMC 17.14.090 are eligible for time extensions in accordance with the criteria and procedures provided hereinafter.

A. An initial one-year extension, which has been filed at least thirty days prior to the expiration of the seven-year period, may be granted by the community development director or his/her designee upon a finding that the applicant has attempted in good faith to submit the final plat within the seven-year period. Submittal of complete engineering plans for the plat prior to the expiration of the seven-year time limit shall constitute a good faith effort.

B. Two additional one-year extensions may be administratively granted, which shall be reviewed for compliance with the following:

1. The applicant has pursued submitting the final plat in good faith. Submittal of complete engineering plans for the plat prior to the expiration of the seven-year time limit shall constitute a good faith effort on the part of the applicant;

2. There have been no changes to the comprehensive plan, zoning ordinance, development standards or other applicable codes which are inconsistent with the approved preliminary plat, unless such changes can be incorporated into the existing plat without significantly altering the plat as originally approved by the hearing examiner; and

3. There are no other significant changed conditions that would render filing of the preliminary plat contrary to the public health, safety or general welfare.

C. For preliminary plats approved prior to January 1, 2008 which are affected by the United States Fish and Wildlife Service's requirement for a Habitat Conservation Plan protecting Federally Listed Species, the community development director or his/her designee may issue time extensions in one year increments until a Citywide or Individual Habitat Conservation Plan is approved by the U.S. Fish and Wildlife Service, but in no case shall time extensions exceed 3 years. During such extensions granted pursuant to this subsection, the plat shall continue to be subject to the conditions of approval and vested rights that applied to the approved phased preliminary plat prior to the extension, with the exception of storm drainage standards, design guidelines and building and fire codes, unless it would significantly alter the plat as approved by the hearing examiner.

**Section 2.** Section 17.14.090 of the Tumwater Municipal Code is hereby amended to read as follows:

**17.14.090 Phased development.**

A. Residential developments containing more than one hundred dwelling units and commercial or industrial developments covering more than twenty acres are eligible to attain final plat approval in phases. Phased approval of final plat is limited to developments with at least two but not more than four phases.

Upon receipt of the recommendation from the development review committee, the hearing examiner shall hold a public hearing and shall review the phased land division in accordance with this title, the recommendations of the development review committee, reports of other agencies and officials, if any, and the hearing testimony. At the hearing, the hearing examiner shall consider and may alter any part of the proposed phased development. The hearing examiner may approve, approve with conditions, or disapprove the phasing plan.

The preliminary plat for a phased development shall show the number of phases, the area each phase encompasses, and the sequence for submission for recording of the various phases. The period of time between the date of the preliminary approval of the phased land division by the hearing examiner and the date of filing for final plat approval for the first phase may not exceed seven years; provided, however, that a time extension may be granted in accordance with subsection B hereof or TMC 17.14.080(A). Construction plans for each phase of a phased development shall include stormwater management facilities that comply with all state

and local requirements in effect at the beginning of the time period allotted for that phase. Applications for final plat approval for each successive phase must be submitted within three years of the submittal for final plat approval on the previous phase, except as provided below.

B. For phased preliminary plats approved prior to January 1, 2008 which are affected by the United States Fish and Wildlife Service's requirement for a Habitat Conservation Plan protecting Federally Listed Habitat and/or Species, the community development director or his/her designee may issue time extensions in one year increments until a Citywide or Individual Habitat Conservation Plan is completed, but in no case shall time extensions exceed 3 years. During such extensions granted pursuant to this subsection, the plat shall continue to be subject to the conditions of approval and vested rights that applied to the approved phased preliminary plat prior to the extension, with the exception of storm drainage standards, design guidelines and building and fire codes, unless it would significantly alter the plat as approved by the hearing examiner.

BC. For phased preliminary plats, approved-after August 1, 2006, the duration of approval for each phase set forth in subsection A of this section may be individually extended in one-year increments upon written request of the applicant and approval by the community development director; provided, that:

1. The phased preliminary plat has not expired by limitation.
2. The applicant submits a timetable with the request for extension demonstrating that the total duration of years for all phases of an approved phased preliminary plat will not exceed the total duration that would have occurred by following the timeline set forth in subsection A of this section. For example, additional time to attain final plat approval on any individual phase must be made up from time saved on one or more of the other phases of the phased preliminary plat.
3. The applicant demonstrates to the satisfaction of the director that controls and practices are in place to maintain the property throughout the period of the extension to prevent erosion and overgrown vegetation, and to control site access, where applicable.

CD. Time extensions that are granted pursuant to these regulations shall continue to be subject to the conditions of approval and vested rights

that applied to the approved phased preliminary plat prior to the extension, with the exception of storm water management regulations and building and fire codes, except as provided under subsection B, above. If time extensions are granted pursuant to these regulations, subsequent phases shall meet current storm water management regulations and building and fire codes. The director's decision shall be a final decision of the city of Tumwater and not subject to administrative appeal.

**Section 3. Corrections.** The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

**Section 4. Ratification.** Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

**Section 5. Severability.** The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

**Section 6. Effective Date.** This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.


ADOPTED this 2<sup>nd</sup> day of August, 2016.

CITY OF TUMWATER

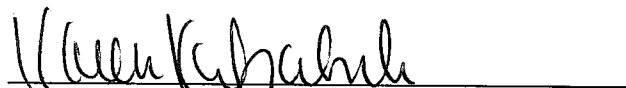


Pete Kmet, Mayor

ATTEST:

  
Melody Valiant, City Clerk

APPROVED AS TO FORM:

  
Karen Kirkpatrick, City Attorney

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